

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

ELIJAH LEE MILLER,

Plaintiff,

v.

K. MCTAGGART, et al.,

Defendants.

No. 2:21-cv-1521 CKD P

ORDER

Plaintiff is a state prisoner proceeding pro se and seeking relief pursuant to 42 U.S.C. § 1983. This proceeding was referred to this court by Local Rule 302 pursuant to 28 U.S.C. § 636(b)(1).

Plaintiff requests leave to proceed in forma pauperis. As plaintiff has submitted a declaration that makes the showing required by 28 U.S.C. § 1915(a), his request will be granted. Plaintiff is required to pay the statutory filing fee of \$350.00 for this action. 28 U.S.C. §§ 1914(a), 1915(b)(1). By separate order, the court will direct the appropriate agency to collect the initial partial filing fee from plaintiff's trust account and forward it to the Clerk of the Court. Thereafter, plaintiff will be obligated for monthly payments of twenty percent of the preceding month's income credited to plaintiff's prison trust account. These payments will be forwarded by the appropriate agency to the Clerk of the Court each time the amount in plaintiff's account exceeds \$10.00, until the filing fee is paid in full. 28 U.S.C. § 1915(b)(2).

1 The court is required to screen complaints brought by prisoners seeking relief against a  
2 governmental entity or officer or employee of a governmental entity. 28 U.S.C. § 1915A(a). The  
3 court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally  
4 “frivolous or malicious,” that fail to state a claim upon which relief may be granted, or that seek  
5 monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

6 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
7 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28 (9th  
8 Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
9 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
10 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
11 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
12 Cir. 1989); Franklin, 745 F.2d at 1227.

13 In order to avoid dismissal for failure to state a claim a complaint must contain more than  
14 “naked assertions,” “labels and conclusions” or “a formulaic recitation of the elements of a cause  
15 of action.” Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 555-557 (2007). In other words,  
16 “[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory  
17 statements do not suffice.” Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009). Furthermore, a claim  
18 upon which the court can grant relief has facial plausibility. Twombly, 550 U.S. at 570. “A  
19 claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw  
20 the reasonable inference that the defendant is liable for the misconduct alleged.” Iqbal, 556 U.S.  
21 at 678. When considering whether a complaint states a claim upon which relief can be granted,  
22 the court must accept the allegations as true, Erickson v. Pardus, 551 U.S. 89, 93-94 (2007), and  
23 construe the complaint in the light most favorable to the plaintiff, see Scheuer v. Rhodes, 416  
24 U.S. 232, 236 (1974).

25 The court has reviewed plaintiff’s complaint and finds that it fails to state a claim upon  
26 which relief can be granted under federal law. Plaintiff’s complaint must be dismissed. The  
27 court will, however, grant leave to file an amended complaint.

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1 If plaintiff chooses to amend the complaint, plaintiff must demonstrate how the conditions  
2 complained of have resulted in a deprivation of plaintiff's constitutional rights. See Ellis v.  
3 Cassidy, 625 F.2d 227 (9th Cir. 1980). Also, in his amended complaint, plaintiff must allege in  
4 specific terms how each named defendant is involved. There can be no liability under 42 U.S.C.  
5 § 1983 unless there is some affirmative link or connection between a defendant's actions and the  
6 claimed deprivation. Rizzo v. Goode, 423 U.S. 362 (1976). Furthermore, vague and conclusory  
7 allegations of official participation in civil rights violations are not sufficient. Ivey v. Board of  
8 Regents, 673 F.2d 266, 268 (9th Cir. 1982).

9 Plaintiff is informed that section 1997(e)(a) of Title 42 of the United States Code provides  
10 that "[n]o action shall be brought with respect to prison conditions under section 1983 of this title,  
11 . . . until such administrative remedies as are available are exhausted." The exhaustion  
12 requirement demands "proper" exhaustion. Woodford v. Ngo, 548 U.S. 81, 90-91 (2006). In  
13 order to "properly exhaust" administrative remedies, the prisoner must generally comply with  
14 department procedural rules, including deadlines, throughout the administrative process. Jones v.  
15 Bock, 549 U.S. 199, 218 (2006); Woodford, 548 U.S. at 90-91.

16 Also, the court cannot refer to a prior pleading in order to make plaintiff's amended  
17 complaint complete. Local Rule 220 requires that an amended complaint be complete in itself  
18 without reference to any prior pleading. This is because, as a general rule, an amended complaint  
19 supersedes the original complaint. See Loux v. Rhay, 375 F.2d 55, 57 (9th Cir. 1967). Once  
20 plaintiff files an amended complaint, the original pleading no longer serves any function in the  
21 case. Therefore, in an amended complaint, as in an original complaint, each claim and the  
22 involvement of each defendant must be sufficiently alleged.

23 Finally, plaintiff must submit an amended complaint which is legible. The original  
24 complaint is difficult, and at some points impossible to understand.

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1 In accordance with the above, IT IS HEREBY ORDERED that:

2 1. Plaintiff's request for leave to proceed in forma pauperis (ECF No. 2) is granted.

3 2. Plaintiff is obligated to pay the statutory filing fee of \$350.00 for this action. All fees  
4 shall be collected and paid in accordance with this court's order to the Director of the California  
5 Department of Corrections and Rehabilitation filed concurrently herewith.

6 3. Plaintiff's complaint is dismissed.

7 4. Plaintiff is granted thirty days from the date of service of this order to file an amended  
8 complaint that complies with the requirements of the Civil Rights Act, the Federal Rules of Civil  
9 Procedure, and the Local Rules of Practice. The amended complaint must bear the docket  
10 number assigned this case and must be labeled "Amended Complaint." Failure to file an  
11 amended complaint in accordance with this order will result in a recommendation that this action  
12 be dismissed.

13 Dated: September 3, 2021



CAROLYN K. DELANEY  
UNITED STATES MAGISTRATE JUDGE

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